

## **REMARKS**

This application has been carefully reviewed in view of the current Final Office Action. The undersigned has spoken with Examiner Gart regarding this case on June 29, 2004, and several times since including October 14, 2004. This application was discussed along with S/N 09/836,632, which is being abandoned in favor of the current application, at the suggestion of Mr. Gart. Mr. Gart was helpful to the undersigned at that time in understanding the basis for the rejection. The newly presented claims are a result of the above interviews, and represent amended claims from S/N 09/836,632. Abandonment of S/N 09/836,094 should obviate any double patenting issues.

## **REQUEST FOR INTERVIEW**

The undersigned respectfully requests that the Examiner contact him after review of this response for an interview at his convenience prior to issuance of another action, in order to assure that the Applicants' position is fully understood. Mr. Gart agreed to do this in the discussion of October 14, 2004.

## **ARGUMENTS**

Regarding the provisional rejection based upon obviousness type double patenting over serial number 09/836,632, this provisional rejection will be obviated by the abandonment of the copending application, as agreed by the undersigned in conversations with Mr. Gart regarding prosecution of these two applications.

Applicant has disclosed and claimed a system in which a first network presence provides information concerning downloadable digital data as well as physical media for purchase by the consumer. In certain embodiments, the consumer may select the downloadable data for purchase at which point the consumer is automatically linked to a second presence to complete the download transaction. The newly presented claims are believed, as explained below, to clearly distinguish over the Digital River reference as well as the Fritsch reference.

The Fritsch reference was used in the 09/836,632 application as a basis of

rejection and is addressed below. Fritsch fails to meet each and every claim feature as required to establish anticipation. Consider, by way of example and not limitation, claim 1 as originally submitted (without amendment). Claim 1 of this application as originally submitted calls for *"maintaining a first presence on the electronic network to which a consumer may connect; transmitting a first page from the first presence to the consumer over the electronic network, the first page including information concerning the purchasable content; receiving a command from the consumer over the electronic network indicating that the consumer wishes the transaction for the purchasable content; and automatically linking the consumer to a second presence on the electronic network in response to the command such that a second page is transmitted from the second presence to the consumer over the electronic network."* (Emphasis added) This language clearly indicates that the user must be automatically linked to a second presence from the first presence in order to complete the transaction. The undersigned is unable to find a teaching of this automatic linking in the Fritsch reference. In view of the above, it is believed clear that the Fritsch reference falls short of meeting all of the claim features as required to establish anticipation. The Fritsch reference has been discussed with the Examiner, and Examiner Gart has indicated that he feels that the Digital River reference is more appropriately applied. No rejection currently exists for these claims based on Digital River.

The Digital River reference is used in the current application and the Examiner indicates that the claims of the 09/836,632 application must also be considered in view of this reference. The undersigned notes that the current claims find their basis in the 09/836,632 application, but have been substantially rewritten for presentation in the present application. The claims as presented here call for the user to have the ability to shop for both downloadable and physical media at a first web page from a first network server. The user is only transferred to a second web page from a second server upon indicating that the downloadable content is specified for purchase. The newly presented claims incorporate the feature that the purchasable content at the first web page comprises both the downloadable data and physical media. The claims also specify that the actual transaction involves certain of this purchasable content (not necessarily

all of the content). The claims further specify that certain actions are based upon a decision as to whether the transaction involves downloadable data. These feature are neither disclosed nor suggested by the Digital River reference which, in its clearest disclosure, appears to transfer control to the second entity to carry out all purchasing activity. However, Applicant submits that the Digital River reference is far from enabling as to Applicant's invention as claimed.

The Digital River reference appears to make certain disclosures in the form of marketing press releases and the like relating to Digital River's ability to team with companies in order to provide delivery of products (downloadable and physical). However, Applicant finds these disclosures to lack any of the technical details necessary either teach, suggest or enable one of ordinary skill in the art to meet each and every claim limitation as called out in the current claims. For example, there is no teaching or suggestion of *"receiving a command from the consumer over the electronic network indicating that the consumer has selected certain of the purchasable content and wishes the transaction for the selected the purchasable content, wherein the selected purchasable content is displayed on the first page; determining that the selected purchasable content includes the downloadable digital data; automatically linking the consumer to a second network server that hosts a second web site on the electronic network in response to the command"* as required by claim 27. There is no indication that the consumer is able to shop at one site for both downloadable and physical content, and then only being transferred to the second site upon a selection to purchase downloadable content.

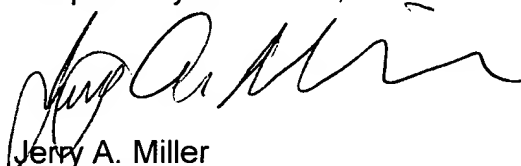
It is noted that each and every claim element and their interrelationships must be disclosed or suggested in order to establish a *prima facie* case of unpatentability. While the undersigned applauds the Examiner's extraordinary efforts to identify the Digital River reference, it is noted that the reference fails to provide adequate technical detail to both disclose and enable each and every element of the claims. There is no clear teaching in the Digital River reference as to the function and technical details of the Digital River system in adequate detail to support a rejection. Moreover, Applicant

believes that the nature of the disclosure (marketing information) is inadequate to enable.

Since no claim rejection based on the Digital River reference currently exists, Examiner Gart has agreed to discuss the matter upon receipt of the current amendment. The undersigned looks forward to such discussion. In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date.

Approximately simultaneously with this submission, Applicant will be submitting an information disclosure statement. Applicant respectfully requests consideration of the information in this IDS prior to further action on the merits of this case.

Respectfully submitted,



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